

# women's ASYLUM NEWS

Refugee Women's Resource Project - Asylum Aid - Issue 21 May 2002

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## Lesbian, gay, bisexual and transgender asylum seekers: obstacles to protection under the 1951 UN Convention

In January 2002, an immigration court in Chicago (USA) granted refugee status to a gay man who had fled his country after years of living in fear of persecution at the hands of his family, the police and anti-homosexuals groups (see more details below p.5). His advocates held that the man qualified for asylum based on 'his membership in the social group of gay men with female sexual identities'.

His case adds to a growing number of gay and lesbian asylum seekers who, in recent years, have been granted refugee status on a similar basis in Australia, New Zealand, Northern America, as well as Northern Europe. The number of such cases remains however limited to a few hundreds and lesbian cases are even fewer around the world.

In the UK, Heaven Crawley notes that 'the question as to whether homosexuals constitute a particular social group within the meaning of the Refugee Convention has closely followed the debate and case-law developments regarding the construction of particular social groups more generally'.<sup>1</sup> In this respect, the decision in *Shah and Islam* is particularly relevant to sexual orientation cases as

shown by the fact that the Asylum Directorate Instructions for Home Office decision-makers refer directly to it when providing guidance on such cases: '*In the light of the judgment we can no longer argue that homosexuals (or other persons defined by sexual orientation) are not capable of being a social group. Discrimination against homosexuals in a society may be such as to single them out as a social group depending on the factual circumstances in the country concerned*'.<sup>2</sup>

Despite this positive trend, there is on the other hand acknowledgment that lesbians around the world face additional obstacles when seeking protection under the 1951 UN Convention. According to Shannon Minter, staff attorney for the National Centre for Lesbian Rights, 'access to asylum is an all but unreachable goal for the vast majority of lesbians who need protection'.<sup>3</sup> Heaven Crawley also reports that 'information provided by the [International Gay and Lesbian Human Rights Commission] also suggests that lesbian asylum seekers are at a disadvantage even vis-à-vis gay men'.<sup>4</sup>

<sup>2</sup> Quoted by Crawley, H., op. cit. (emphasis in original). See also footnote 13 below on the interpretation of membership of a 'particular social group' in *Shah and Islam*.

<sup>3</sup> See Minter, S., 'Lesbians and asylum: overcoming barriers to access', p. 3, in Levy S (ed) 'Asylum Based on Sexual orientation: A resource guide' (International Gay and Lesbian Human Rights Commission, London Legal Defence and Education Fund, London).

<sup>4</sup> Crawley, H., ibid.

<sup>1</sup> Crawley, H., 'Refugees and Gender: Law and Process', Jordans, London, 2001, pp.161-174.

**Main issues for homosexual asylum seekers and their advocates** A review of a handful of (mostly male) cases determined recently highlights the most common issues that need to be addressed by advocates as far as lesbian, gay, bisexual or transgender (LGBT hereafter) asylum seekers are concerned.

**Credibility:** If the client has not revealed his/her homosexuality immediately when claiming asylum, the Home Office, adjudicator and/or judges will question his/her credibility. Yet there are various reasons for a client to delay disclosing this information: cultural constraints may lead people to feel uncomfortable talking about it, or some may have fled for other reasons and/or did not realise that their homosexuality was a factor in the persecution they suffered. Muslim in particular may find it very difficult to talk about homosexuality due to the taboo attached to homosexuals in the societies they come from.

Lesbian are also often reported to make claims on other grounds than that of sexual orientation. As a result, they may not 'come out' for months if not years after first applying for asylum (in other cases it may never be revealed). The result is that the credibility of the claim is questioned.

An example of credibility being challenged on this basis (homosexuality not disclosed at an early stage) is clearly provided in the case of Krasniqi: the Adjudicator '*did not find the Appellant's assertion that he was a homosexual to be credible on the basis of the timing in which that information was put forward as a basis for the Appellant's fears. The Adjudicator noted however that such an allegation is easy to make and impossible to disprove*'. In appeal, the judge noticed that '*with regard to the*

*appellant's claim to be a homosexual, (...) no evidence has been produced to us to establish that the Adjudicator was wrong in making that finding*'.<sup>5</sup>

Anisa de Jong from the SAFRA project,<sup>6</sup> who facilitated last month a workshop on Muslim lesbians, gay and bisexual/transgender (LGBT) and asylum, recalled the case of a Lebanese who had been seeing a counsellor for 2 years without revealing his homosexuality. She saw herself the client four years after he first claimed asylum. On the basis of the account he had given until then, she suspected that he was a homosexual and proceeded to explain to him in details all the grounds for claiming asylum under the 1951 UN Convention. She explained carefully how they could include sexual orientation. The client opened up during his second meeting with her.

Another obstacle is that HO decision makers, adjudicators and judges have assumption about lesbian and gay people: if they are married or have children, they will question the nature of their sexuality and the basis of their asylum claims. Other issues such as the background of the solicitor can also be problematic. Barry O'Leary mentioned the case of a Muslim lesbian who after a long period had the courage to reveal her experience to her solicitor, a Muslim. His first reaction was: 'do you consider yourself a good Muslim?'

<sup>5</sup> *Krasniqi v SSHD CC-22108-00 (01TH02140)*, 30<sup>th</sup> August 2001

<sup>6</sup> SAFRA, is a resource project for LGBT who are Muslim and / or come from a Muslim background and encounter obstacles in obtaining fair and equal social services or legal protection because of their cultural, religious or ethnic identity, or gender and sexual orientation (see also Women's Asylum News Issue 20).

In terms of credibility too, cases of Muslim lesbian present a particular challenge for legal representatives or caseworkers in so far as they usually have very few sexual experience if not none at all: this makes it all the more difficult to try to map the experience of the claimant and in particular incidence of persecution.

**Persecution:** The challenge for advocates is to prove that the violence inflicted amounts to persecution under the 1951 UN Convention but it is particularly acute for lawyers or caseworkers representing homosexuals. A typical example is the approach taken in the Netherlands, where lesbian and gay were recognised as particular social group under the Geneva Convention in the early 80s. Despite this, the main problem they continue to face remains the question of persecution: does the treatment they suffered amount to persecution or serious harm?

In addition to *'traditional'* forms of human rights violations, gay and lesbian may endure discriminatory policies that prevent them access to essential services such as employment or health care or worse, force them to undergo *'medical intervention'* in order to attempt to alter their sexual orientation. In addition, lesbians may also be forced to conform socially by being forced to marry and have sexual relationship with their husbands for instance. Yet proving that discrimination or adherence to social mores amount to serious harm is not easy task. In 1994, an Immigration Judge in the USA concluded that a Russian lesbian who had been put in a special institution and underwent *'medical treatment'* forcibly had not

suffered serious harm within the meaning of persecution.<sup>7</sup>

Gay or lesbian asylum seekers may therefore have to suffer years of cumulative mistreatment and/or serious harm before being seen as *'eligible'* to apply for refugee protection.

**Lack of objective evidence** is intrinsically linked to the question of persecution and refers to two issues: evidence of persecution of homosexuals and whether the state tolerates persecution of homosexuals. In Krasniqi,<sup>8</sup> it was found that *'even if we were to accept that the appellant is a homosexual and therefore a member of a particular social group, we would still dismiss this appeal as we have seen no evidence that as a homosexual the appellant will be at real risk of persecution on removal to Kosovo'*.

Whilst Krasniqi's advocate admitted that he had been unable to find evidence of homophobia in Kosovo, he also pointed that it was very likely that *'in an Islamic society there would be open and deep hostility towards homosexuals'* especially as Kosovo remains a rural and conservative society and that the judges *'should take notice that in such societies bigotry exists'*. He also pointed out to a report from the Kosovo Information Project which suggested that *'there is no sufficiency of protection for homosexuals in Kosovo because there is no tracking system for any complaints in this regard'*. The evidence was however not deemed sufficient by the court to prove persecution.

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<sup>7</sup> *In Re Pitcherskaia*, No A-72143932 (Immigration Judge, 13 June 1994).

<sup>8</sup> See footnote 5 for reference.

One Iranian case (from where homosexual cases are usually successful) recently failed (Majit Aslami, **re to check** decision January 2002): the question resolved around whether the sauna where the homosexual activities took place, was a private or public place. The tribunal accepted that the sauna was a public place and therefore that the prosecution was valid as the client knew that homosexuality is illegal in Iran (appeal pending).

**Up-dated information on the actual treatment of homosexuals** constitutes a major problem, especially in countries where there are laws explicitly condemning homosexuality and/or sodomy. Amnesty International's report, 'Crimes of hate', describe the invisibility and experience of LGBT in a number of countries. Other human rights reports provide very few information. Barry O'Leary, solicitor for Stonewall Immigration Group who specialise in asylum cases based on sexual orientation, confirmed that with the exception of Iran all Country Information Policy Unit (CIPU) reports are rather silent on the issue. When they acknowledge the existence of laws prohibiting homosexuality, CIPU reports state that such laws are not put into practice therefore homosexuals not deemed to be at risk of persecution.

Such an approach is clearly adopted in court: in Z v SSHD (01/TH/2634), 8 November 2001, the Secretary of State argument's was that '*since sodomy law was not enforced [in Zimbabwe], the appellants' rights would not be infringed by its existence*'. Whilst the tribunal was sympathetic to such an argument, it also stated: '*we cannot see how the conclusion can be avoided that the existence of a law against sodomy is an infringement of the*

*rights to private life of anyone who might wish to engage in that practice*'. In other words, it was found that the prohibition of homosexuality constitutes a violation of one's human rights.

Even when the evidence is available, there may be a reluctance to admit that lesbian and gay suffer from persecution. In another Zimbabwean homosexual case (Darnley Ashley v SSHD (01/TH/1837), 21 September 2001), the Tribunal recorded that the Appellant's representative '*was quite unable to refer us to any evidence of actual current public outrage against homosexuals in Zimbabwe*'. This statement was made despite well documented years of anti-gay propaganda by President Mugabe which culminated with his public statement describing lesbians and gays as being '*worse than pigs and dogs*'.<sup>9</sup>

The difficulty lesbian women face is also that of evidence of actual prohibition of female homosexuality: in some countries there are explicit laws prohibiting male homosexuality but not female. As a result, lesbian women are deemed not to be liable to prosecution. A lesbian from Malaysia who had been forced to marry was refused asylum because it was concluded that it was unlikely that she would be prosecuted under Malaysian shar'ia law (see below gay case for treatment of homosexuals in Malaysia).<sup>10</sup>

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<sup>9</sup> The Daily News confirmed these facts when it recently reported on the investigation of allegations that the Zimbabwean Broadcasting Corporation's chief executive officer (CEO) was homosexual after he was caught in a city nightclub, prompting security guards to arrest him (see 'ZBC probe Boss', 2 April 2002, Harare, online at <http://allafrica.com/stories/200204020196.html>).

<sup>10</sup> Refugee Appeal No 2151/94 13 November 1997, quoted by Crawley, H., op. cit., p. 167.



There is also the issue of the individual having recourse to the authorities for protection: Muslim lesbian women for instance will very often not go to the police because they are well aware that homosexuality is prohibited. In such cases, caseworkers need to provide objective evidence. There has been successful cases where police was not involved in the persecution. The caseworker has to demonstrate that discrimination and/or persecution has happened throughout life, from childhood to present day. But the standards the HO is looking for are very high: clients usually need to show a 'scar'.

In the case of Rackus (from Lithuania), the adjudicator said there was a paucity of evidence that authorities are condoning violence against homosexuals and said that the violence suffered was the result of a breakdown of discipline amongst individuals. The tribunal however rejected this and allowed the appeal.

**Suggestions to help ensure better protection** were put forward at SAFRA's first focus meeting in April 2002.

There was a consensus on **raising awareness** about the above-mentioned issues amongst legal practitioners and caseworkers through training workshops.<sup>11</sup> Social and health workers were also suggested as a target group not the least because they may be the first point of contact for homosexuals or the first person to whom they would talk about their experiences. In addition, Islamophobia and/or xenophobia are common amongst social workers.

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<sup>11</sup> In many ways, the issues at stake are similar to that of gender issues in an asylum case but they still may need to be explicitly '*unpacked*' for all dealing with homosexual asylum seekers.

The choice of interpreter (who should be from a different country or culture altogether if possible) is equally crucial (the Lebanese client who revealed the true basis of his story after four years did so partly because he was then able to talk without the use of an interpreter). It was therefore suggested that it would be good for caseworkers to build up a list of appropriate interpreters. At the same time, caseworkers should keep a record of inappropriate interpretation and used such a record at a later stage if necessary.

**Information Sharing, of good practice in particular**, was deemed equally crucial. For instance, Barry O'Leary, from Wesley Gryk Solicitors and member of Stonewall Immigration Group, had created a very successful group of solicitors that represent Jamaican claiming asylum on the basis of their sexual orientation. He is very keen on creating a similar forum not only for practitioners, but also for homosexual asylum seekers to share their experience. Stonewall Immigration Group has also put a list of solicitors with details of their speciality on their website: [www.stonewall-immigration.org.uk/](http://www.stonewall-immigration.org.uk/).

Women Living Under Muslim Laws announced that they were currently gathering information on the legal status and community/social acceptance of LGBT in Muslim countries and countries with a significant Muslim population.

Other suggestions included the dissemination of information on experts, liaising with the Lesbian and Gay Human Rights Commission (LGHRC) in the USA and other groups such as the International Lesbian and Gay Association; as well as refugee women's organisations that may have split with other mainstream groups for

standing up for such issues as homosexuals' rights.

In addition, SAFRA proposed to create an e-list for members to be kept informed on issues around Muslim LGBT, possibly with different sub e-lists re: asylum, access to social services, etc. SAFRA is also planning to organise a conference in June in Manchester. For more details, please contact [anisadejong@hotmail.com](mailto:anisadejong@hotmail.com).

### **International case law: Gay Malaysian with a female sexual identity gains refugee status in the USA<sup>12</sup>**

In January 2002, an immigration court in Chicago (USA) granted refugee status to a man who had fled his country after years of living in fear of the police, Islamic authorities, vigilante groups, and even his own family. The submission presented by his advocates held that the man qualified for asylum as he escaped persecution at the hands of the police and anti-homosexuals groups based on '*his membership in the social group of gay men with female sexual identities*'.

In order to obtain asylum based on membership in a social group, an applicant must: "(1) identify a particular social group; (2) establish that [he] is a member of that group; and (3) establish that [his] well-founded fear of persecution is based on [his] membership in that group."

His advocates said that the courts in the USA have consistently looked at the United Nations Handbook for guidance in defining social group. In particular, and *inter alia*, they based their argument on the Mexican case of Hernandez-Montiel where the (9<sup>th</sup>

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<sup>12</sup> This is a summary version of the submission made to the Immigration Court. All details on this case were kindly provided by Vanessa Melendez, Chicago Law clinic [to complete when access to Maccess].

Circuit) court held that '*a particular social group may be united by a voluntary association or by an innate characteristic that is so fundamental to the identities or consciences of its members that members either cannot change it or should not be required to change it*'. The court concluded that '*sexual orientation and sexual identity are immutable; they are so fundamental to one's identity that a person should not be required to abandon them*'. The court accepted that in Mexico '*gay men with sexual identities are ostracized from an early age and subjected to persecution and police misconduct*'.<sup>13</sup>

In the case of Malaysia, it was argued that gay men with female sexual identities are a cognizable social group in Malaysia. Such men are known as *mak nyah* (transsexuals) and *pondan* (gender-crossers), a large number of whom are Muslim Malays who are condemned for violating the tenets of Islam.<sup>14</sup> They are labelled sexual deviants and generally shunned by society at a young age. As a result, they tend to frequent certain areas

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<sup>13</sup> In the UK, a similar approach to the interpretation of membership of a 'particular social group' as referred to in the 1951 UN Convention was adopted by the House of Lords in the case of *Shah and Islam* (1999). Crucially, rejecting a previous ruling (*SSHD v Savchenkov* [1996] Imm AR 28 (CA), the Lords found that '*whilst [the] social group must exist independently of persecution, discrimination against the group could be taken into account in identifying it as a social group i.e. discrimination against the group could be a factor contributing to the identity of a social group*'. The Lords also rejected the concept of 'cohesiveness' required for the existence of a social group (see *Islam v SSHD; R v IAT ex parte Shah* [1999] INLR 144, Imm AR 283 (HL).

<sup>14</sup> Under Islamic law, sexual relationships between men are considered a sin. See Yik Koon, '*Mak Nyahs in Malaysia, the Influence of Culture and Religion on Their Identity*', Malaysian Northern University, research paper presented at the Fourth International Congress on Cross-Dressing, Sex and Gender Issues, Philadelphia, October 5-8, 2000. According to the author, non-Muslim *mak nyahs* are at less risk of apprehension by the authorities due to the fact that there is no official religious ruling to bind their behavior, as there is with Muslims.

where they know there will be others like them. They also share specific social characteristics, such as mannerisms and style of dress (often in the form of female clothing).

In this context, it was shown that the respondent was routinely ridiculed and abused from an early age, and throughout his teenage and adult life, by his parents, teachers, peers, religious leaders and, ultimately, by Malaysian authorities. He suffered continued bullying at school and his parents repeatedly abused him physically, hitting him household objects. On one occasion, his mother hit him with a broom with such force that he had to go to the hospital with a severe head wound.

He also faced severe persecution in the outside world. He and his friends were verbally and physically harassed wherever they went. One night, he was forced to carry out oral sex and witness two of his friends being sodomized by police officers. Not only did the experience traumatized him but he had to live with the threat of similar harassment, violation and persecution on a regular basis.

The lawyers argued that the respondent had a well-founded fear of persecution if returned to Malaysia in particular in the context of rising influence of and support for Islamic fundamentalism and as the very authorities meant to protect him from homophobia are known perpetrators of such mistreatment.

Current evidence shows that the Malaysian Islamic Affairs Department operates as “*the morality police*”, with fifty enforcement officers across the country who are empowered to arrest Muslims suspected of breaking Islamic laws, including homosexuals, transvestites and

transsexuals. A recent study also demonstrates that these laws are routinely enforced and that gay men with female sexual identities are apprehended by the police and Islamic religious authorities at relatively high rates.<sup>15</sup>

Gay men have also been blamed for the country's social and economic struggles by its authorities. In 2000 the deputy prime minister was arrested as a ‘*sodomist*’ and subsequently tortured. Two years before, supporters of Malaysia's Prime Minister had launched the “People's Voluntary Anti-Homosexual Movement” (PASRAH), whose acting chairman declared, “*these homosexuals or sodomites have begun to threaten the stability of Malaysian society,*”

*Mak nyah* are therefore particularly isolated and vulnerable both because they are gay and because of their female sexual identities. Unlike other gay men who may conceal their identity, common characteristics and dress make them easy to identify them.

**Pakistani woman fleeing domestic violence loses asylum case in Australian High Court** Despite a growing recognition that women suffering from domestic violence and who are not able to get protection from the state authorities should find protection under the 1951 UN Geneva Convention (see also below, UNHCR latest paper on ‘*Refugee Women*’ p.10), a High Court's decision in Australia on 11 April 2002 denied refugee

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<sup>15</sup> See Yik Koon, op. cit. The study reported that of the 507 “*mak nyah*” surveyed, 55% had been apprehended by the police. Of this group, 20% had been apprehended between four to nine times, and 5% had been caught ten times or more. The most common offense charged was cross-dressing. In addition, 28% of all respondents reported that they had been apprehended by the Islamic religious authority.

status to a Pakistani woman who fled her country after being repeatedly assaulted by her husband (Minister for Immigration and Multicultural Affairs v Khawar [2002] HCA 14). The decision constitutes a dramatic departure from decisions such as that in *Shah and Islam* in the UK and demonstrates again, along with the diversity of views expressed by the different courts in the case, the lack of uniformity in decisions taken on gender-related persecution worldwide.

The woman had been the *'target of domestic violence at the hands of her husband, and, to a more limited extent, of his family. The violence included slappings, beatings, which led to her hospitalisation, a threat to throw acid on her and a threat to kill her by setting fire to her. On one occasion, an attempt to set fire to her commenced when she was doused with petrol, an activity which stopped when a neighbour arrived in response to the screams of Ms Khawar and her children'*.<sup>16</sup>

She reported the violence to the police on four separate occasions but received no protection and instead was told that *'such incidents were occurring throughout the country and that they could do nothing about it'* or that *'women always tried to blame their husbands for problems of which they were the real cause'*. On one occasion, her husband and his brother beat her so harshly for reporting her case to the police that she had to be hospitalised for a week.<sup>17</sup> She fled the country and arrived in Australia in June 1997. Her application for asylum was refused in January 1999 by the

Refugee Review Tribunal (RRT) who found that:

*'the conduct that the Respondent feared was not for reasons of her membership of any particular social group, nor was it for any other Convention related reason. It found that the Respondent's problems were related solely to the fact that she married her husband against the wishes of her husband's family'*.<sup>18</sup>

Whilst the Tribunal found that the woman had not been harmed for a Convention reason, it did consider that the harm she suffered *'was of sufficient severity to come within the meaning of the expression "persecution"'*.<sup>19</sup> On the other hand, it did not indicate whether it accepted submission material according to which there is a systematic failure by police in Pakistan to investigate complaints of domestic violence.

The applicant applied to the Federal Court for review of the Tribunal's decision on the ground that the Tribunal had failed to make findings with regard to the authorities' failure to provide protection. The Federal Court (constituted by one judge) agreed on this matter but also concluded that the *'[T]ribunal reached a conclusion on the question of whether [the applicant's] fear of persecution was for reason of her membership of a particular social group without first identifying the relevant social group'*. The female judge set aside the decision of the Tribunal and referred the matter to the Tribunal *'for further consideration according to law'*.

<sup>16</sup> Federal Court of Australia (2000) *Minister For Immigration & Multicultural Affairs v Khawar* [2000] FCA 1130, 23 August 2000, Available at: [www.austlii.edu.au/au/cases/cth/federal\\_ct/2000/1130.html](http://www.austlii.edu.au/au/cases/cth/federal_ct/2000/1130.html)

<sup>17</sup> Facts of the case summarised by RWRP from the hearing in the Federal Court of Australia (2000) op. cit.

<sup>18</sup> Her husband who had married her *'for love'* had been subsequently estranged from his family for five years.

<sup>19</sup> High Court of Australia (2002) *Minister for Immigration & Multicultural Affairs v Khamar* [2002] HCA 14, 11 April 2002.



An appeal by the Minister to the Full Court of the Federal Court was dismissed by majority on 23 August 2000. The majority found that *'the state's conduct constituted persecution and secondly, by finding that the combination of the husband's conduct and the state's conduct also constituted persecution'*. In June 2001, the High Court granted the Ministry for Immigration leave to appeal the decision of the Federal Court.<sup>20</sup> The main grounds for appeal were:

*'The majority erred in law by holding that a state's systemic failure to protect the members of a particular social group who were subject to domestic violence could constitute persecution 'by reason of' the victim's membership of the group, even though the perpetrator of the violence was not motivated by a Convention reason to inflict the violence. The majority also erred by holding that the causal nexus required by the words 'by reason of' could be established if domestic violence, perpetrated for a non-Convention reason, was inflicted in the knowledge that state protection would not be provided to the victim by reason of her membership of a particular social group.'*<sup>21 22</sup>

In reaching its decision to allow the Minister's appeal, the High Court referred to the opinion of a dissenting judge in the

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<sup>20</sup> *Minister for Immigration and Multicultural Affairs v Khamar & ORS (S128/2001)* Court appealed from: Full Court of the Federal Court of Australia, Date of judgment: 23 August 2000, Date of grant of special leave: 1 June 2001.

<sup>21</sup> High Court of Australia, (2001) *Minister for Immigration and Multicultural Affairs v Khawar & Ors (S128/2001)*, 1 June 2001, Available at: [www.hcourt.gov.au/registry/matters/matters\\_nov2001.htm](http://www.hcourt.gov.au/registry/matters/matters_nov2001.htm)

<sup>22</sup> High Court of Australia Bulletin 2002, No.1, as at 25 February 2002, Available at: [www.austlii.edu.au/au/other/hca/bulletin/hcab0201.html#internal18](http://www.austlii.edu.au/au/other/hca/bulletin/hcab0201.html#internal18)

Full Court according to whom *'persecution involves the doing of a deliberate act, rather than inaction'* and *'some aspects go the situation in Pakistan may not, regrettably, be unique to that country'*. The judge had compared the situation in Pakistan to that of Australia, where *'there is (...) a lack of enthusiasm in the authorities (...) to come to the aid of women who are victims of domestic violence. [Yet] it would not be suggested that the State is, or for that matter the police are, persecuting those women'* (par. 149-150).

The High Court agreed and concluded: *'What there is here is what sadly occurs from time to time everywhere (...): violent family discord of which the unfortunate first respondent is the victim and in respect of which the police are reluctant interveners. (...) As to women married to abusive husbands (...) there will always be questions as to the efficacy and availability of local measures to prevent the abuse'* (par. 154).

*'The first basis upon which the appeal succeeds is that there is no finding of fact by the Tribunal that the government of Pakistan was complicit in violence to women in abusive relationships. (...) Inactivity or inertia of itself does not constitute persecution. It is very difficult, indeed probably impossible, for an Australian court to assess according to our own standards or the standards of other countries the policing priorities of those countries.'* (par. 155, Our emphasis).

The judgment goes on: *'There needs to be, for persecution to have occurred, elements of deliberation and intention on the part of the State, which involve, at the very least, a decision not to intervene or act'*. (par. 155).

The High Court also agreed with the Tribunal on the issue that membership of a particular social group had not been established in this case: the woman had not been harmed for *'for the reason that she was (...) a separated married woman in Pakistan without male relatives as protectors, or a woman who had, in some way, transgressed the accepted social customs of Pakistani society'* (par. 151). It adds: *'I would doubt whether there is any such characteristic, attribute, activity, belief, interest or goal here [defining membership of a 'particular social group']'*.

*'What the Tribunal did was to identify the actual cause of the violence. (...) It was apparent that it occurred for a different reason, from any Convention reason. And that cause, coupled with reluctance, rather than deliberate abstention, by the police, still could not amount to a Convention reason. This is another basis upon which the appeal succeeds'*. (par. 156).

## UK Projects, Events, News

**Refugee Mental Health Conference** The Conference will take place on 17<sup>th</sup> June 2002 at the Arcola Theatre, 27 Arcola Street, London E8 2JD (10:30am to 4:30pm) and will include plays, exhibitions, workshops and a panel discussion. The event, organised by Social Action for Health will be an ideal opportunity for refugees, mental health professionals, community and frontline workers to get information, network, discuss issues and make recommendations.

It is free for refugees, community workers, activists, and voluntary sector. A small fee of £20 is charged if you are working in a statutory organisation. **Please book your place as early as possible** by contacting

Social Action for Health, Brady Centre, 192 Hanbury Street, London E1 5HU, tel 020-7247 1414, fax 020-7247 7447 or email: [ferhatc@safh.org.uk](mailto:ferhatc@safh.org.uk).

**Appeal for Afghan Women RAWA** Some practitioners from the Refugee Legal Centre are organizing a fundraising event for the Revolutionary Association of the Women of Afghanistan RAWA (for more see [www.RAWA.org](http://www.RAWA.org)) on Thursday July 4th at the Arts Café, 28 Commercial Street, London E1 6LS (£8 a ticket).

Performance include a couple of comedians including Shazia Murza and a live band invited to perform and a number of gifts have already been selected. The organizers are however still looking for people who would be able to contribute with the fundraising either by donating items/goods that can be auctioned or who would be able to perform on the night. Thank you to contact Anita Sharma at [asharma@refugee-legal-centre.org.uk](mailto:asharma@refugee-legal-centre.org.uk).

## International News

**UN Conference: The role of Men & Boys in ending Gender-Based violence** is the subject of a panel discussion at a conference organised *inter alia* by several UN bodies on 6 June 2002.

The items to be addressed by panellists who include human rights advocates from Kenya, Pakistan and Tanzania, are: *'The Role of Youth against Gender-based Violence'*, *'Challenging Custom through the Legal System'*, *'Launching National and Global Movements'*, and *'Ending Gender-Based Violence is a Policy Matter'*.

The basis of the discussion is the recognition that *'prescriptions for gender*

roles and relations can lead, for example, to so called "honor killing", rape and domestic violence. Men as well as women are affected. The scourge of gender-based violence is one of the most serious obstacles to the achievement of gender equality. It will be addressed with a focus on men's roles and responsibilities in ending it. The panel will raise questions, then, concerning socialization processes and discourses of masculinity and offer some examples of policy and program leadership at both national and global levels'.

For more details, visit online:

[www.undp.org/gender/programmes/men/men\\_events\\_beijing.html](http://www.undp.org/gender/programmes/men/men_events_beijing.html)

### **Publications/Other resources**

#### **Committee to Defend Women's Rights in the Middle East produces new bulletin**

'*Women in the Middle East*', provides news on the latest events, legislation or violations affecting women's rights in Islamic and secular countries in the region, ranging from North Africa to Middle East or any other country where Islamic rule affects the life of women. The first issue (May 2002) reports on four women currently awaiting to be sentenced to death by stoning in Iran, Pakistan and Nigeria (see also Women's Asylum News April 2002). Details of how to protest against the sentences are also included. Meanwhile in Mecca, Saudi Arabia, 15 pupil girls were burnt to death in a girl's school as the religious police prevented the girls to escape the blaze and firemen to evacuate them because the girls were not wearing the mandatory Islamic dress.

**Morocco & Jordan: reforms in women's civil rights** In Morocco the government's proposal to eliminate inequalities in the laws has been met with resistance amongst political Islamic groups as they denounce the reform as a threat to Islam and family. The reform would raise the legal age for marriage to 18 from 15 for women, outlaw polygamy in most cases and allow divorcee women for the first time custody of their children if they remarry.

In December last year, the Jordanian Cabinet also approved several amendments to the Civil status law including: new restriction on polygamy, provisions for women to have legal resource in case of divorce, and raising the legal age for marriage to 18 for women and men; in addition, a legislative amendment to Article 340 of the Penal Code means that perpetrators of honour crimes are not exempt from the death penalty.

For more information or to subscribe to the bulletin (by email), contact Azam Kamguian, editor, at [azam\\_kamguian@YAHOO.COM](mailto:azam_kamguian@YAHOO.COM). The Committee's website can be visited at [www.eclipse.co.uk/women](http://www.eclipse.co.uk/women).

#### **Human Rights Watch complete Migrants Rights Project online**

Visit <http://www.hrw.org/campaigns/migrants> for information on HRW's work on the rights of migrants and asylum seekers in Western Europe.

HRW's Children's Rights Division also released a publication '*Nowhere to Turn: State Abuses of Unaccompanied Migrant Children by Spain and Morocco*' (available in English and Spanish, a summary and recommendations also available in French and Arabic). For a copy, please contact [masona@hrw.org](mailto:masona@hrw.org)

**Information pack on 'Non-Consensual Sex in Marriage'** (NCSM)

The pack produced by the non-governmental organisation Change contains details on legal frameworks (including international instruments), policy initiatives and cultural contexts and relevant research data on NCSM, as well as a collection of women's testimonies from all over the world. It also contains a bibliography and a list of useful contacts for sources of information.

To obtain a copy, please contact Kate Bell on: Tel: 020 7733 6525 Fax 020 7733 9923 or email: [change@sister.com](mailto:change@sister.com). Alternatively write to Change, Bon Marche Centre Room 222, 241-251 Ferndale Road, London SW9 8BJ.

**UNHCR releases paper on 'Refugee Women' as part as its Global Consultations on International Protection on Women (May 2002)**

The paper (re: EC/GC/02/8, 25 April 2002) produced in consultation with a number of partners addresses the five '*most salient and sometimes inter-related protection concerns facing refugee women today*' and includes:

- safety and security in all refugee projects and programmes;
- facilitating equal access to humanitarian assistance and essential services; registration and documentation issues including the separate documentation of women;
- gender-sensitive application of refugee law and procedures including facilitating separate claims for women;

- trafficking in women and girls and including extending asylum procedures to the victims of trafficking.

Crucially the UNHCR's document affirms domestic violence as a basis for asylum: '*The refugee definition, itself, allows for an array of valid gender-based claims, including (...) severe forms of domestic violence (...). In addition, most countries recognize non-State actors of persecution, including husbands or partners who violate a woman's human rights, where the state is unable or unwilling to protect against persecution*' (para. 14).

The full document is available in pdf at [www.unhcr.ch/prexcom/globalcon.htm](http://www.unhcr.ch/prexcom/globalcon.htm) .

Also produced by UNHCR is the **latest statistics report on asylum trends** in Europe, North America, Australia and New Zealand for January – March 2002 (25 April 2002) available online: [www.unhcr.ch/cgi-bin/texis/vtx/home?page=statistics](http://www.unhcr.ch/cgi-bin/texis/vtx/home?page=statistics)

**Nationality, Immigration and Asylum Bill: a full text copy of the second reading of the Bill** is available online at: [www.asylumsupport.info/thenewbill.htm](http://www.asylumsupport.info/thenewbill.htm)



# women's ASYLUM NEWS

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The RWRP is funded by the Community Fund, the Joseph Rowntree Charitable Trust, Oxfam, Womankind Worldwide, Servite Sisters Charitable Trust Fund, Avenue Trust and Law Society Trustees. Any views expressed in this publication are those of the authors. Any legal information in this bulletin is intended as a general guide only, and should not be used as a substitute for legal advice. Any contributions from, or references to, external sources, agencies or individuals do not necessarily reflect the views of Asylum Aid nor receive our endorsement.



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